

CITY OF NEWBERG
PROFESSIONAL SERVICES AGREEMENT AMENDMENT NO. 3
October 10, 2001

Project: General Consulting Services Agreement
Consultant: Anderson Engineering, Inc.

Summary of Proposed Changes:

1. Work Involved:

Additional consulting services on an as-needed basis for: staff support to the Community Development Office, orientation of new staff, and work on projects such as: Springbrook Plaza signal, SDC Calculations, Pavement Management Systems, etc.

2. Cost Summary:

Original contract amount:	\$10,000.00
Net change by previous amendments:	<u>4,000.00</u>
Previous total:	\$14,000.00
This amendment:	<u>\$ 2,500.00</u>
Amended contract amount:	\$16,500.00

3. Contract Time:

This Amendment does not affect the contract schedule.

All other provisions of the professional services agreement remain in force.

ACCEPTANCE SIGNATURES:

Anderson Engineering, Inc.

Larry Anderson 10-11-01
Larry Anderson, P.E., P.L.S. Date
President

M. Adgett 10/15/01
COMMUNITY DEPT DIR.

City of Newberg

Duane Cole 10/12/2001
Duane Cole Date
City Manager

Approved as to Form:

Terrence D. Mahr
Terrence D. Mahr By: DMW Date
City Attorney

CITY OF NEWBERG
AGREEMENT WITH LARRY ANDERSON, P.E., P.L.S. dba
ANDERSON ENGINEERING, INC.
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG

THIS AGREEMENT is entered into this 31st day of October, 2000 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and

Larry Anderson, P.E., P.L.S. dba
Anderson Engineering, Inc.
112 N. Springbrook Road
Newberg, Oregon 97132
503-537-1110 fax: 503-537-0910
andeng@open.org

hereinafter called **Consultant**.

RECITALS:

1. **City** has need for the services of a **Consultant** with particular training, ability, knowledge, expertise and experience possessed by **Consultant** related to:

GENERAL CONSULTING SERVICES

NOW, THEREFORE, in consideration of mutual promises, covenants and agreements of the parties, it is agreed as follows.

1. **Effective Date and Duration:** This Agreement shall become effective on the date that this Agreement has been signed by every party hereto.

Unless, terminated or extended, this Agreement shall expire when the **City** accepts **Consultant's** completed performance or on-going work. This fact notwithstanding, the services of **Consultant** shall be authorized and paid on a phase-by-phase basis as described in Exhibit "A."

Expiration shall not extinguish or prejudice **City's** right to enforce this Agreement with respect to any reach of a **Consultant** warranty or any fault or defect in **Consultant's** performance that has not been cured.

2. **Termination:** This Agreement may be terminated at any time by mutual, written consent of the parties. The **City** may, at its sole discretion terminate this Agreement in whole or part upon a 30-day written notice to **Consultant**. The **City** may terminate immediately upon notice to the **Consultant** that the **City** does not have funding, appropriations, or other necessary expenditure authority to pay for **Consultant's** work. The **City** may terminate Agreement at any time for material breach.

This Agreement may be terminated by either party at the end of a project phase as defined in Exhibit "A" or at any time upon a 30-day written notice.

3. **Scope of Work:** The **Consultant** agrees to provide the services provided in the Scope of Work which is Exhibit "A" and attached hereto and incorporated by this reference. The **Consultant** represents and warrants to the **City** that the **Consultant** can perform the work outlined in the Scope of Work for the fee proposal amount.

4. **Compensation:** The **Consultant** agrees to perform the work for a not-to-exceed fee as indicated in their professional fee proposal obtained in the Scope of Work. The not-to-exceed figure is as follows:

\$10,000.00

The **Consultant** shall not exceed the fee for any task included in the fee proposal amount. If the **Consultant** sees that the fee is going to exceed the not-to-exceed figure because the task has changed or is outside the scope, the **Consultant** shall notify the **City** in writing of the circumstances with an estimated amount that the fee

is to be exceeded. The **Consultant** shall obtain written permission from the **City** before exceeding the not-to-exceed fee amount. If the **Consultant** does work that exceeds the maximum fee amount prior to obtaining the written permission, the **Consultant** waives any right to collect that fee amount.

5. **Additional Work Not Shown within the Scope of Work:** If **City** requests or requires work to be done not within the Scope of Work of this project, the **Consultant** shall notify the **City** of such work, provide an estimated fee amount, and obtain written instructions to proceed with work in the form of an Agreement amendment prior to proceeding with work and incurring any costs on behalf of the **City**. If **Consultant** proceeds with work prior to obtaining permission and/or Agreement amendment, the **Consultant** waives any right to collect fees for work performed.

6. **Agreement Documents:** This Agreement consists of the following documents which are listed in descending order of preference: Contract and Scope of Work.

This Agreement with attached Exhibits is the proposal of the **Consultant**. Work is under the sole control of **Consultant**, however, the work contemplated herein must meet the approval of the **City** and shall be subject to **City's** general right of inspection and supervision to secure the satisfactory performance thereof.

7. **Benefits:** **Consultant** will not be eligible for any federal social security, state workers compensation, unemployment insurance, or public employees' retirement system benefits from the Agreement payment except as a self-employed individual.

8. **Federal Employment Status:** In the event any payment made pursuant to this Agreement is to be charged against federal funds, **Consultant** certifies that he or she is not currently employed by the federal government and the amount charged does not exceed his or her normal charge for the type of services provided.

9. **Consultant's Warranties:** The work to be performed by **Consultant** includes services generally performed by **Consultant** in his/her usual line of business. The work performed by the **Consultant** under this Agreement shall be performed in a good and businesses-like manner in accordance with the highest professional standards. The **Consultant** shall, at all times, during the term of this Agreement, be qualified, be professionally competent, and dully licensed to perform the work.

10. **Indemnity:** **Consultant** shall defend, indemnify and hold harmless **City** from and against all liability or loss and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever resulting from, arising out, or relating to the activities of the **Consultant**, or its officers, employees,

subcontractors, or agents under this Agreement.

11. **Independent Contractor:** **Consultant** is not currently employed by the **City**. The parties to this Agreement intend that the **Consultant** perform all work as an Independent Contractor. No agent, employee, or servant of **Consultant** shall be or shall be deemed to be the employee, agent or servant of **City**. **City** is interested only in the results obtained under this Agreement; the manner and means of conducting the work are under the sole control of **Consultant**, however, the work contemplated herein must meet the approval of the **City** and shall be subject to **City's** general right of inspection and supervision to secure the satisfactory performance thereof.

12. **Taxes:** **Consultant** will be responsible for any federal or state taxes applicable to payments received under this Agreement. **City** will report the total of all payments to **Consultant**, including any expenses, in accordance with the Federal Internal Revenue Service and the State of Oregon Department of Revenue regulations.

13. **Insurance:**

a) **Consultant**, its subconsultants, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers; or by signing this Agreement, **Consultant** represents that he or she is a sole proprietor and is exempt from the laws requiring workers' compensation coverage.

b) **Consultant** will, at all times, carry a Comprehensive General Liability insurance policy for at least \$1,000,000.00 combined single limits per occurrence for Bodily Injury, Property Damage, and Personal Injury. If the policy is written on the new occurrence form then the aggregate limit shall be \$2,000,000.00. The **City**, its agents, employees and officials all while acting within their official capacity as such, shall be named as an additional insured on the insurance specified in this paragraph.

c) **Consultant** will, at all times, carry a Professional Liability/Errors and Omission type policy with limits of at least \$500,000.00. If this policy is a "claims made" type policy, the policy type and company shall be approved by the City Manager prior to commencement of any work under this Agreement.

d) **Consultant** shall furnish the **City** with Certificates of Insurance upon execution of Agreement. Such Certificates of Insurance evidencing any policies required by this Agreement shall be delivered to the **City** prior to the commencement of any work. A 30-day notice of cancellation clause shall be included in said certificate. The **City** has the right to reject any certificate for unacceptable coverage and/or companies.

14. **Assignment:** The parties hereto each bind themselves, their partners, successors, assigns and legal representatives of such other party in respect to all terms of this Agreement. Neither party shall assign the Agreement as a whole without written consent of the other.

15. **Ownership of Work Product:** All original documents prepared by **Consultant** in performance of this Agreement, including but not limited to original maps, plans, drawing and specifications are the property of **City** unless otherwise agreed in writing. Quality reproducible records copies shall be provided to **City** at **City's** expense, upon request. **City** shall indemnify and hold

harmless **Consultant** and **Consultant's** independent professional associates or **Subconsultants** from all claims, damages, losses and expenses including attorney's fees arising out of any unauthorized use of any instruments of professional service.

16. **Entire Agreement:** This Agreement constitutes the entire Agreement between the parties and supersedes all prior agreements, written and oral, courses of dealing, or other understanding between the parties. No modification of this Agreement shall be binding unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned.

CONSULTANT

By: 

Name: Larry Anderson, P.E., P.L.S. dba
Anderson Engineering, Inc.

Title: Principal

Date: Oct. 6, 2000

CITY OF NEWBERG

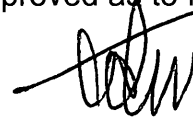
By: 

Name: Duane R. Cole
City of Newberg

Title: City Manager

Date: Oct. 3, 2000

Approved as to form:



Terrence D. Mahr, City Attorney

EXHIBIT A

AGREEMENT TO THE CITY OF NEWBERG TO PROVIDE CONSULTING SERVICES

SCOPE OF WORK RELATED TO GENERAL CONSULTING SERVICES

July 27, 2000

General Consulting Services: Meetings, consultations with staff, budget, traffic and transportation engineering services, development review, etc.

On-call Professional Services	\$85.00 per hour
Office Support / Clerical	\$35.00 per hour

Capital Projects Services: Complete design, surveying, and construction services for any or all of the following projects, in whole or in part. Utilizing City staff for surveying, drafting and document preparation, or Anderson Engineering, Inc. staff according to the rate schedule below.

Projects

- 99W Highway Reconstruction
- Hancock Street Waterline
- Hancock Street Lights
- Northside Road
- Villa Road Culvert
- Storm Water Master Plan
- Storm Water Utility
- East Side Reservoir
- Water Model Update
- Hess Creek Flood Map Revision

Upon request, Anderson Engineering, Inc. will prepare a detailed scope of work, schedule and estimated not-to-exceed cost for engineering services along with an estimated construction cost for each project. This preliminary engineering work will be charged at the General Consulting Services rates.

If authorized, final design, surveying, right-of-way services, and construction services will be performed at the rates noted below.

Rate Schedule

Principal Engineer	\$ 85.00 per hour
Principal Surveyor	\$ 70.00 per hour
Two-man survey crew	\$100.00 per hour
Design-Drafting	\$ 60.00 per hour
Document Prep./Clerical	\$ 35.00 per hour
Materials	Cost + 15%

interoffice

MEMORANDUM

to: File

cc: Terry Mahr

from: Mike Soderquist, Duane Cole

re: Professional Services Agreements: Anderson Engineering, Inc.

date: October 19, 2000

The purpose of this memo is to document the reasons for retaining and the processes followed in retaining Larry Anderson, P.E., doing business as Anderson Engineering, Inc., to complete certain tasks/projects in which he had been intimately involved while City Engineer.

Larry resigned on June 9. In terms of the Engineering Division, we were (and still are) in the midst of the most busy and productive period in years. Among the engineering projects which are underway are:

- ODOT's 99W/Brutscher-to-Main project (\$15 million).
- The River Street sewer project (\$1 million).
- The 99W water main relocation project (\$1.5 million).
- The Charles (\$246,000) and Andrew Streets (\$144,000) pump station upgrades.
- The new Sheridan Street pump station project (\$258,000).
- Development of well #7 (and associated dealings with Marion County)(\$1.1 million).
- The eastside reservoir, with associated 7,000 ft 24" diameter pipeline (\$3 million).
- The Fernwood Road/Brutscher Street water and sewer pipelines and wastewater pump station project (\$1.1 million).
- The Northside Road (Villa to College) project (\$2.2 million).
- The wastewater treatment plant composter upgrade project (\$900,000).
- The Morton Street storm sewer project (\$300,000).
- Wrapping up the NSP lawsuit settlement.

Even before Larry left the City, we began the process of recruiting a replacement. That process concluded in failure in July; the only qualified candidate declined our offer, saying it was too low.

Thus, we found ourselves with all this work and only 2 staff engineers: Jadene Torrent (not yet registered) and Paul Chiu. Given this situation, Mike doled out most of what was formerly Larry's work to the remaining staff (including Mike), although staff already was overloaded.

We retained Anderson Engineering, Inc. on August 10 on an indefinite services contract (not-to-exceed \$10,000), so he could be of service to our staff dealing with transition issues.

from the desk of...

Mike Soderquist
Director

Community Development Department
P.O. Box 970
414 E. First Street
Newberg, OR 97132

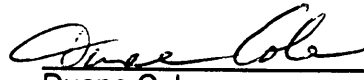
Phone: 503-537-1240
Fax: 503-537-5013

email: soderqm@ci.newberg.or.us

With a separate contract, we retained Larry to complete engineering activities spelled out in the NSP lawsuit settlement (\$9,180). As the City's key player in this legal action over the past 5 years, Larry was the only person who could efficiently and effectively perform these duties.

Retention of the ex-City Engineer for a time after he leaves the City to complete projects he has begun usually is the most cost-efficient, practical approach to getting through this temporary labor "crunch." To have gone through formal competitive selection processes for these two jobs would not have been practical, given the time limitations, since no other consultant would have had the experience in these areas than Larry.

In terms of other jobs, even though they, too have been transitional in nature, there existed the possibility that consultants other than Larry might be qualified and competitive. Therefore, we have solicited competitive quotes in these cases.


Mike Soderquist
Community Development Director
Duane Cole
City Manager